

51. News about the government warning was also featured in national newspapers, including the *Washington Post*, *The Wall Street Journal*, *USA Today*, and the *New York Times*.<sup>125</sup>

#### **B. Local Publicity About the Government Warning**

52. News of the government's warning that diet drug users should see their doctors was widely published in newspapers and broadcast on television in the West.<sup>126</sup> For example, a *Los Angeles Times* article entitled "Heart Tests Urged For Users of Fen-Phen," reported that "[a]nyone who took the drugs . . . should undergo an echocardiogram . . . whether or not they have symptoms of heart disease."<sup>127</sup> Local news broadcasts relayed similar messages. One, from a CBS affiliate in Los Angeles, stated that the government "says if you took [fenfluramine or Redux] for any amount of time, go see your doctor."<sup>128</sup>

53. Major newspapers in other western states, such as Utah, published articles about the government's warnings concerning the possible risks of

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<sup>125</sup> *Fenfluramine, Redux Dieters are Urged to See Physicians*, WASH. POST, Nov. 14, 1997, at A24; *FDA Says Fen-Phen Users Need Doctor's Examination*, WALL STREET J., Nov. 14, 1997, at B13; Nancy Hellmich, *Takers of Some Diet Drugs are Urged to Get Medical Exam*, USA TODAY, Nov. 14, 1997, at 3A; Lawrence K. Altman, *Heart Checks Urged for Users of Diet Pills*, N.Y. TIMES, Nov. 14, 1997.

<sup>126</sup> Sabin Russell, *Diet Drug Study Prompts Users' Hearts Concerns/ Uproar over Fen-Phen's Effect*, SAN FRANCISCO CHRON., Nov. 28, 1997, at A1; *7 News at 6:00* (KGO-TV television broadcast, Nov. 13, 1997); *Eyewitness News* (KABC-TV television broadcast, Nov. 13, 1997); *Eyewitness News at Ten* (KPIX-TV television broadcast, Nov. 13, 1997); *Newscenter Four Nightbeat* (KRON-TV television broadcast, Nov. 13, 1997); *13 News at 10:00* (KCOP-TV television broadcast Nov. 14, 1997).

<sup>127</sup> Lawrence K. Altman, *Heart Tests Urged for Users of Fen-Phen*, LOS ANGELES DAILY NEWS, Nov. 14, 1997, at 16.

<sup>128</sup> *2 News at 11:00* (KCBS-TV television broadcast Nov. 13, 1997).

diet drugs.<sup>129</sup> Additionally, the issue was reported on the local news.<sup>130</sup> For example, the NBC station in Salt Lake City urged former users to undergo a physical because “as many as one in three former Fen-Phen and Redux users may have damaged heart valves.”<sup>131</sup>

54. Media outlets around the Northeast likewise carried the government’s recommendation that diet drug users consult a physician.<sup>132</sup> For instance, the *New York Times* and the *New York Daily News*, as well as local television stations, provided warnings regarding diet drugs.<sup>133</sup> New

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<sup>129</sup> See, e.g., *Diet-Drug Users Are Told to Get Physical Checkups*, SALT LAKE TRIB., Nov. 14, 1997, at A16; *Taken ‘Fen-Phen’ or Redux? See Your Doctor, FDA Says*, DESERET NEWS (Salt Lake City, Utah), Nov. 15, 1997.

<sup>130</sup> See, e.g., *13 News at 9:00* (KSTU-TV television broadcast, Nov. 13, 1997); *2 News at 10:00* (KUTV-TV television broadcast, Nov. 22, 1997).

<sup>131</sup> *5 News at 6:30* (KSL-TV television broadcast, Nov. 13, 1997).

<sup>132</sup> See, e.g., *Agency Issues Advisory for Dieters*, HARTFORD COURANT, Nov. 14, 1997, at A14; *Taken Fen-Phen or Redux? See Your Doctor, Feds Say*, BRISTOL PRESS (Bristol, Conn.), Nov. 14, 1997; *Diet Drug Users Warned: See Your Doctors Now*, CONNECTICUT POST (Bridgeport, Conn.), Nov. 14, 1997; *Taken Fen-Phen or Redux? See Your Doctor, Government Says*, GLOUCESTER COUNTY TIMES (Woodbury, Conn.), Nov. 14, 1997; *FDA Advises Dieters to Get a Checkup*, HOUR (Norwalk, Conn.); Tara Meyer, *Dieters Who’ve Taken Redux or Fen-Phen Advised to See Doctor Even if They Feel Fine*, JOURNAL INQUIRER (Manchester, Conn.), Nov. 14, 1997; *Fen-Phen or Redux Users Should See Doctor Even if They Feel Fine*, MIDDLETOWN PRESS (Middletown, Conn.), Nov. 14, 1997; *Fen-Phen, Redux Dieters Advised to See Doctor*, NEW HAVEN REGISTER (New Haven, Conn.), Nov. 14, 1997; *Examination Advised for Users of Diet Drugs*, NEWS-TIMES (Danbury, Conn.), Nov. 14, 1997; *Doctors May Help Fen-Phen Users*, RECORD-JOURNAL (Meriden, Conn.), Nov. 14, 1997; Tara Meyer, *Government: Used Fen-Phen or Redux? See Your Doctor*, ADVOCATE (Stamford, Conn.), Nov. 14, 1997; *People Who’ve Taken Diet Drugs Should Get Exams, FDA Advises*, SUNDAY REPUBLICAN (Waterbury, Conn.), Nov. 16, 1997; *FDA Urges Heart Tests for Diet Drug Users*, NEW HAVEN REGISTER (New Haven, Conn.), Nov. 20, 1997, at E1; *News 9 at 5* (WMUR-TV Nov. 14, 1997).

<sup>133</sup> See, e.g., Lawrence K. Altman, *Heart Checks Urged for Users of Diet Pills*, N.Y. TIMES, Nov. 14, 1997; *Diet-Drug Users Advised to Have a Health Check*, TIMES UNION (Albany, N.Y.), Nov. 14, 1997, at A1; Tara Meyer, *Dieters Who Used Fen-Phen or Redux Told to Get Checkup*, BUFFALO NEWS, Nov. 14, 1997, at A8; *Taking Fen-Phen? See an MD- Feds*, N.Y. DAILY NEWS, Nov. 14, 1997, at 42; *2 News at Noon* (WCBS-TV television broadcast, Nov. 14, 1997); *4 News Today* (WNBC-TV television broadcast

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York's *Newsday* urged "[a]nyone who has ever taken the controversial diet drugs Pondimin or Redux, which have been linked to heart valve disease," to visit a doctor and get an echocardiogram even if they felt no symptoms.<sup>134</sup>

The article further cautioned that the Department of Health and Human Services said patients who took the pills should not wait for symptoms like shortness of breath or a heart murmur to appear before being examined for heart or lung damage.<sup>135</sup>

55. Newspapers and television stations in Massachusetts similarly disseminated the government's admonition that diet drug users visit their physicians.<sup>136</sup> For example, in addition to the government recommendation to undergo a physical examination, a *Boston Globe* article included the government guidelines issued to address the questions many users had.<sup>137</sup> One of the television news broadcasts warned that former diet drug users should have a physical because "[b]y the time [a patient] develops

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Nov. 14, 1997); *Eyewitness News This Morning* (WABC-TV television broadcast Nov. 14, 1997); *Good Day First Edition* (WNYW-TV Nov. 14, 1997).

<sup>134</sup> Kathleen Kerr, *Diet Drug User Warning*, *Newsday*, Nov. 14, 1997, at A26.

<sup>135</sup> *Id.*

<sup>136</sup> See, e.g., Tara Meyer, *Diet Drug Users Are Told to See Doctors; Advice Goes for Those Feeling Fine*, *Boston Herald*, Nov. 14, 1997, at 3; Tara Meyer, *Dieters Taking Drugs Told to See Physician*, *Union-News* (Springfield, Mass.), Nov. 14, 1997, at A1; *7 News at 9:00* (WHDH-TV Nov. 15, 1997).

<sup>137</sup> *Exams Urged for All Users of Fen-Phen, Redux*, *The Boston Globe*, Nov. 14, 1997, at A3.

symptoms, [the patient is] already at a point that may be in fact irreversible.”<sup>138</sup>

56. Like other newspapers in the region, Delaware newspapers such as Wilmington’s *News Journal* ran articles recommending that diet drug users go see their physicians.<sup>139</sup> The *News Journal*’s article entitled “Diet Drug Users Told to Get Physical Exam” instructed former diet drug users to “get a physical exam, even if they feel fine.”<sup>140</sup>

57. The same publicity about the government’s warning in November 1997 occurred throughout the South. For example, the *Sun-Sentinel* in Ft. Lauderdale, Florida, informed its readers that “[d]ieters who have used fen-phen or redux for any amount of time should see their doctor and get a physical exam, even if they feel fine.”<sup>141</sup> Many other Florida newspapers and television stations published and broadcast similar stories.<sup>142</sup>

<sup>138</sup> 7 News at 9:00 (WHDH-TV television broadcast, Nov. 15, 1997).

<sup>139</sup> *Diet Drug Users Told to Get Physical Exam*, NEWS J. (Wilmington, Del.), Nov. 14, 1997, at A4.

<sup>140</sup> *Id.*

<sup>141</sup> *Taken Fen-Phen? See Your Doctor, FDA Warns*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Nov. 14, 1997, at 3A.

<sup>142</sup> 25 News at 5:00 (WPBF-TV Nov. 13, 1997); 2 News at 5:00 (WESH-TV Nov. 13, 1997); 6 News at 5:30 (WTVJ-TV Nov. 13, 1997); 4 Eyewitness News Nightbeat (WJXT-TV Nov. 13, 1997); 10 News at 11:00 (WPLG-TV Nov. 13, 1997); 7 News at 6:00 (WSVN-TV Nov. 13, 1997); 28 Tampa Bay News (WFTS-TV Nov. 13, 1997) Fox 13 10:00 News (WTVT-TV Nov. 13, 1997) Eyewitness News 11:00 (WPEC-TV Nov. 13, 1997) Ten O’Clock News (WFLX-TV Nov. 13, 1997); *Fen-Phen, Redux Users Told to See Doctors*, TAMPA TRIB., Nov. 14, 1997, at 2; *Taken Fen-Phen? Here’s New Advice*, ORLANDO SENTINEL, Nov. 14, 1997, at A11; *Users of Fen-Phen or Redux Urged to See Doctor*, FLA. TIMES-UNION, Nov. 14, 1997, at A1; *Taken Fen-Phen? See Your Doctor, FDA Warns*, FORT LAUDERDALE SUN-SENTINEL, Nov. 14, 1997; 4 News This Morning (Miami, Fla.) (WFOR-TV television broadcast, Nov. 14, 1997); *Channel 5 News at 5:00* (WPTV-TV Nov. 14, 1997); *Newschannel 8 at Noon* (WFLA-TV Nov. 14, 1997); 4 Eyewitness News at Noon (WJXT-TV Nov. 14, 1997); 12 First News at 5 (WTLV-TV

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58. Georgia newspapers likewise reported on the government's warning. The *Atlanta Journal* and the *Atlanta Constitution* both published stories on November 14, 1997, urging Pondimin and Redux users to visit their doctors.<sup>143</sup> The *Atlanta Constitution* printed a front-page article with the headline "Checkups Urged for Takers of 2 Diet Drugs," which explained that "there have been enough reports of heart-valve damage associated with the appetite suppressants . . . to justify at least a physical exam for anyone who has taken the drugs."<sup>144</sup>

59. Georgia television news programs also broadcast segments urging diet drug users to visit their doctors for evaluation.<sup>145</sup> On one such program, the Atlanta Fox station reported: "There's an important new warning tonight for anyone who has taken the diet drugs Fen-Phen and Redux. The Centers for Disease Control and Prevention says the drugs could cause heart problems. The CDC is encouraging dieters who used them to have their heart thoroughly checked by a doctor."<sup>146</sup>

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Nov. 14, 1997); *10 News at Noon* (WTSP-TV Nov. 14, 1997); *Fox 13 Good Day* (WTVT-TV Nov. 14, 1997); *Eyewitness News Nightbeat* (WPLG-TV Nov. 14, 1997); *News Channel 2 Sunrise* (WESH-TV Nov. 14, 1997); *3 News Morning* (WEAR-TV Nov. 14, 1997); *6 News Midday* (WTVJ-TV television broadcast, Nov. 14, 1997); *Eyewitness News Daybreak* (WPLG-TV television broadcast, Nov. 14, 1997).

<sup>143</sup> See, e.g., M.A.J. McKenna, *Drugs Have Fallen From day in the Sun*, ATLANTA JOURNAL, Nov. 14, 1997, at G4; M.A.J. McKenna, *Checkups Urged for Takers of 2 Diet Drugs*, ATLANTA CONST., Nov. 14, 1997, at A1.

<sup>144</sup> *Id.*

<sup>145</sup> See, e.g., *11 News at 5:00* (WXIA-TV television broadcast, Nov. 13, 1997); *46 News Tonight* (WGNX-TV television broadcast, Nov. 13, 1997).

<sup>146</sup> *Fox 5 Eyewitness News 10 PM* (WAGA-TV television broadcast, Nov. 13, 1997).

60. The *New Orleans Times-Picayune* in Louisiana similarly published an article detailing the government's warning that diet drug users consult their doctors.<sup>147</sup> The article, "Heart Checks Urged For Users of Diet Drugs," explained that the "new recommendations are a response to widespread confusion among patients and doctors about what they should do."<sup>148</sup>

61. North Carolina newspapers and television stations also urged fen-phen and Redux users to visit their physicians.<sup>149</sup> One newspaper reporting on the issue, the *Charlotte Observer*, emphasized that the new warning applies to anyone who has used the drug—not just those who are experiencing symptoms of heart valve damage.<sup>150</sup> The article even stressed that former users undergoing a dental procedure should be examined.<sup>151</sup>

62. Media in the central United States also relayed to the public the government's warning that diet drug users should consult their doctors.<sup>152</sup>

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<sup>147</sup> Lawrence K. Altman, *Heart Checks Urged for Users of Diet Drugs*, NEW ORLEANS TIMES-PICAYUNE, Nov. 14, 1997, at A20.

<sup>148</sup> *Id.*

<sup>149</sup> See, e.g., Tara Meyer, *Fen-Phen, Redux Users: See Doctor*, CHARLOTTE OBSERVER, Nov. 14, 1997, at 9A; *3 News This Morning* (WBTB-TV television broadcast, Nov. 14, 1997); *5 News at 12:00* (WRAL-TV television broadcast, Nov. 14, 1997); *11 News at 5:30* (WTVD-TV television broadcast, Nov. 14, 1997).

<sup>150</sup> Tara Meyer, *Fen-Phen, Redux Users: See Doctor*, CHARLOTTE OBSERVER, Nov. 14, 1997, at 9A.

<sup>151</sup> *Id.*

<sup>152</sup> *News Channel 4 at 11:00* (WCMH-TV Nov. 13, 1997); *Channel 9 News at 11:00* (WCPO-TV Nov. 13, 1997); *Channel 19 Ten O'Clock News* (WXIX-TV Nov. 13, 1997); *News 5 at 5:00* (WLWT-TV Nov. 13, 1997); *Eight is News at Ten* (WJW-TV Nov. 13, 1997); *Channel 9 News at Noon* (WCPO-TV Nov. 14, 1997); *Channel 43 News Midday* (WUAB-TV Nov. 14, 1997); *Channel 3 News at Noon* (WKYC-TV Nov. 14, 1997); *News 5 at 5:00* (WLWT-TV Nov. 14, 1997); *Eight is News at 5:00* (WJW-TV Nov. 14,

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For example, major newspapers in Texas prominently featured the story.<sup>153</sup> Local television news reports did the same.<sup>154</sup> The *Dallas Morning News* ran a front-page article entitled: “Fen-Phen Cautions Widened; All Who Used Diet Aid Urged to Get Checkups.”<sup>155</sup> The article detailed the government recommendation and quoted insurance spokesmen claiming that the checkups would be covered by particular insurance plans. News broadcasts in the region stressed the urgency of getting a physical to the former users of Redux and fenfluramine. For example, the ABC affiliate in

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1997); *6 News at 5:00* (WSYX-TV Nov. 14, 1997); *Eyewitness News 10 at 5:00* (WBNS-TV Nov. 14, 1997); *News Channel 4 at 5:30* (WCMH-TV Nov. 14, 1997); *News Channel 4 at Noon* (WCMH-TV Nov. 14, 1997); *Eyewitness News 10 at 5:30* (WBNS-TV Nov. 14, 1997); *2 News at 5:00* (WDTN-TV Nov. 14, 1997); *NewsCenter 7 at Noon* (WHIO-TV Nov. 14, 1997); *NewsCenter 7 at 5:00* (WHIO-TV Nov. 14, 1997); *First at Five* (WTOL-TV Nov. 14, 1997); *News 19 at Noon* (WOIO-TV Nov. 14, 1997); *2 News This Morning* (WDTN-TV Nov. 17, 1997); *See Doctor if You Took Diet Drugs*, CINCINNATI POST, Nov. 14, 1997; Tara Meyer, *Taken Fen-Phen or Redux? See Your Doctor, Government Says*, DAILY REPORTER (Columbus, Ohio), Nov. 14, 1997; *Fen-Phen, Redux Users Urged to See a Doctor*, THE LIMA NEWS (Lima, Ohio), Nov. 14, 1997; *Diet Drug Users Told They Should See Doctor*, BLADE (Toledo, Ohio), Nov. 14, 1997; Tara Meyer, *U.S. Advises Diet Aid Users to Get Checkups*, CLEVELAND PLAIN DEALER, Nov. 14, 1997, at 20A; *Risky Diet Drugs: Feds Urge All Patients to Be Tested for Damage*, CLEVELAND PLAIN DEALER, Nov. 14, 1997; Tara Meyer, *Diet Drug Users Need Physicals, FDA Says*, DAYTON DAILY NEWS, Nov. 14, 1997; *Exams Ordered for All Redux, Fen-Phen Users*, CINCINNATI ENQUIRER, Nov. 14, 1997.

<sup>153</sup> See, e.g., *Diet Drug Users Urged to Undergo Examination*, AUSTIN AM-STATESMAN, Nov. 14, 1997, at A5; Tara Meyer, *Fen or Phen Users Urged to Get Exams; Government Advice Follows Diet Drug Recall*, FORT WORTH STAR-TELEGRAM, Nov. 14, 1997, at 1; Tara Meyer, *Fen-Phen Users Told to See a Doctor*, SAN ANTONIO EXPRESS-NEWS, Nov. 14, 1997, at 01A; Tara Meyer, *Redux, Fen-Phen Users Advised to Get Checkup/FDA Urges Testing for Heart Valve Damage*, HOUSTON CHRON., Nov. 14, 1997, at 21.

<sup>154</sup> See, e.g., *2 News* (KPRC-TV television broadcast, Nov. 13, 1997); *11 News at 5:00* (KHOU-TV television broadcast, Nov. 14, 1997); *11 News This Morning* (KTVT-TV television broadcast, Nov. 14, 1997); *Eyewitness News at 5:30* (KTRK-TV television broadcast, Nov. 14, 1997); *Fox News at 6:00* (KRIV-TV television broadcast, Nov. 14, 1997); *Good Day Dallas* (CSPAN-2 television broadcast, Nov. 14, 1997).

<sup>155</sup> Lawrence K. Altman, *Fen-Phen Cautions Widened: All Who Used Diet Aid Urged to Get Checkups*, DALLAS MORNING NEWS, Nov. 14, 1997, at 1A.



Dallas reported that “[m]any obesity experts insisted all along that patients should get a heart exam just as soon as the FDA raised questions about the drug.”<sup>156</sup>

#### **IV. Publicity Concerning Diet Drug Litigation in 1999**

63. In August 1999, a jury in Texas awarded Plaintiff Debbie Lovett more than \$23 million in damages for injuries allegedly caused by her ingestion of Pondimin. CNN broadcast news about the Lovett verdict, including in its coverage the fact that the Lovett case was “the first of thirty-one hundred pending fen-phen cases.”<sup>157</sup> The “CBS Evening News” also aired a story on the Lovett verdict, explaining not only the possible association between Pondimin and heart valve damage, but also noting the withdrawal of the drug in 1997.<sup>158</sup> Other major newspapers, including the *Washington Post* and *The Wall Street Journal*, published news of the verdict as well.<sup>159</sup>

64. The verdict also was reported in various local newspapers around the country.<sup>160</sup> The *Salt Lake Tribune* published a story about the verdict on

<sup>156</sup> 8 News Daybreak (WFAA-TV television broadcast, Nov. 14, 1997).

<sup>157</sup> CNN Headline News Second Watch (CNN Headline News television broadcast, August 6, 1999); CNN Headline News (CNN Headline News television broadcast, Aug. 6, 1999).

<sup>158</sup> CBS Evening News (CBS television broadcast, Aug. 6, 1999). See also NBC Nightly News (NBC television broadcast, Aug. 6, 1999).

<sup>159</sup> See *Fen-Phen User Awarded \$23 Million*, WASHINGTON POST, Aug. 7, 1999, at A05; Robert Langreth, *American Home Is Ordered to Pay \$23.36 Million in Diet-Drug Suit*, WALL ST. J., Aug. 9, 1999, at A4.

<sup>160</sup> See, e.g., *Fen-Phen Maker Ordered to Pay Texan \$23 Million*, DESERET NEWS (Salt Lake City, Utah), Aug. 6, 1999, at A06; *A 36-Year Old Woman Who Faces Lifelong Heart . . .*, NEWSDAY (N.Y.), Aug. 7, 1999, at A079; *\$23 Million Awarded in Diet Drug*  
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*Lawsuit; Texas Case, First of Its Kind to Go to a Jury, Opens Way For Others*, AUSTIN AM.-STATESMAN, Aug. 7, 1999, at A1; Sharon Bernstein & Paul Jacobs, *Woman Wins \$23 Million in Suit Against Fen-Phen Company*, BUFFALO NEWS, August 7, 1999; *Jury Awards \$23.3M in Diet-Drug Case*, BOSTON GLOBE, Aug. 7, 1999, Mike Finger, *Jury Finds Fen-Phen Maker Liable*, ENTERPRISE (Brockton, Mass.), Aug. 7, 1999, at A1; *Woman Awarded \$23 Million in Diet Drug Case*, ATHOL DAILY NEWS (Athol, Mass.), Aug. 7, 1999; *Jury Awards Diet Pill Victim \$23M*, THE SUN (Lowell, Mass.), Aug. 7, 1999; Mike Finger, *Fen-Phen User Draws \$23M in First Award*, PATRIOT LEDGER (Quincy, Mass.), Aug. 7, 1999; Mike Finger, *Jury Awards \$23M to Diet Drug Victim*, SUN CHRONICLE (Attleboro, Mass.), Aug. 7, 1999, at 1A; Mike Finger, *Woman Wins \$23M After Victory in Diet Drug Lawsuit*, NORTH ADAMS TRANSCRIPT (North Adams, Mass.), Aug. 7, 1999; *Jury Awards \$23M in Fen-Phen Case*, TELEGRAM & GAZETTE (Worcester, Mass.), Aug. 7, 1999; *\$23 Million Awarded in Fen-Phen Case*, BERKSHIRE EAGLE, (Pittsfield, Mass.) Aug. 7, 1999; Mike Finger, *Jury Finds Diet Drug Company Liable*, STANDARD-TIMES (New Bedford, Mass.), Aug. 7, 1999; Mike Finger, *Woman to Receive \$23M in Diet Drug Lawsuit*, Greenwich Time (Greenwich, Conn.), Aug. 7, 1999; *Woman Wins \$23M in Diet Drug Suit*, NORWICH BULLETIN (Norwich, Conn.); *Woman Wins \$23M in Suit Against Diet Drug Manufacturer*, NEW HAVEN REGISTER (New Haven, Conn.), Aug. 7, 1999; *East Texas Woman Wins \$23 Million Award in Fen-Phen Case*, MIDDLETOWN PRESS (Middletown, Conn.), Aug. 7, 1997; *Texas Woman Wins \$23 Million Award in Fen-Phen Case*, BRISTOL PRESS (Bristol, Conn.), Aug. 7, 1999; *Woman Awarded \$23 Million in Fen-Phen Case*, HERALD (New Britain, Conn.), Aug. 7, 1999; *Woman Wins \$23 Million in Fen-Phen Case*, DAY (New London, Conn.), Aug. 7, 1999; *AHP Shares Fall After \$23.3M Fen-Phen Verdict*, RECORD-JOURNAL (Meriden, Conn.), Aug. 7, 1999; *\$23M Awarded In Diet Drug Lawsuit*, REPUBLICAN-AMERICAN (Waterbury, Conn.), Aug. 7, 1999; Mike Finger, *East Texas Woman Wins \$23M Award in Fen-Phen Case*, ADVOCATE (Stamford, Conn.), Aug. 7, 1999; Sharon Bernstein and Paul Jacobs, *Fen-Phen Case Ends With Big Judgment*, HARTFORD COURANT, Aug. 7, 1999, at A1; *\$23 Million Awarded in Fen-Phen Case*, NEWS-TIMES (Danbury, Conn.), Aug. 7, 1999, at 1; *Woman Wins Millions in Fen-Phen Lawsuit*, NEWPORT DAILY NEWS (Newport, R.I.), Aug. 7, 1999; *Woman Awarded \$23 Million in Suit Over Fen-Phen Diet Drug*, PROVIDENCE JOURNAL, Aug. 7, 1999; Mike Finger, *Millions Awarded in Fen-Phen Case*, RUTLAND DAILY HERALD (Rutland, Vt.), Aug. 7, 1999, at 1; Mike Finger, *East Texas Woman Wins \$23M Award in Fen-Phen Case*, BENNINGTON (Vt.) BANNER, Aug. 7, 1999; *\$23 Million Awarded in Diet Drug Suit*, TIMES ARGUS (Barre, Vt.), Aug. 7, 1999; Mike Finger, *Jury Finds Drug Company Liable*, ST. ALBANS (Vt.) MESSENGER, Aug. 7, 1999; Mike Finger, *Diet-Drug User Wins \$23M From Company*, MORNING SENTINEL (Waterville, ME), Aug. 7, 1999; *Jury Awards Texas Woman \$23 Million in Diet Drug Case*, FOSTER'S DAILY DEMOCRAT (Dover, N.H.), Aug. 7, 1999; Mike Finger, *Woman Awarded \$23M From Diet Drug Company*, PORTSMOUTH HERALD (Portsmouth, N.H.), Aug. 7, 1999; *Woman Awarded \$23M in Diet Drug Verdict*, TELEGRAPH (Nashua, N.H.), Aug. 7, 1999; Mike Finger, *\$23 Million Awarded in Fen-Phen Case*, SAN ANTONIO EXPRESS-NEWS, Aug. 7, 1999, at 02A; *Fen-Phen User Awarded \$23 Million*, NEWS J. (Wilmington, Del.), Aug. 7, 1999; Mike Finger, *Fen-Phen User Draws \$23M in First Award*, PATRIOT LEDGER, Aug. 7, 1999, at 04; Mike Finger, *Texan Wins Suit Over Diet Drug Fen-Phen Maker to Appeal Big Award*, ATLANTA J. & ATLANTA CONST., Aug. 7, 1999, at A4; Mike Finger, *Woman Wins \$23 Million in Lawsuit over Fen-Phen; Jury Buys Claim That Diet Drug Damaged Heart*, NEW ORLEANS TIMES-PICAYUNE, Aug. 7, 1999, at A198; Mike Finger, *Woman With Heart Woes Wins \$23M in Diet Drug Case*, TIMES UNION (Albany, N.Y.), Aug. 7, 1999, at A5; Jim Yardley, *Diet Drug Maker*

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its front page.<sup>161</sup> The story also was front-page news in newspapers from Los Angeles to Fort Worth to Orlando.<sup>162</sup>

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*Suffers Major Setback; 1<sup>st</sup> Verdict Awards User \$23.4 Million*, FORT LAUDERDALE SUN-SENTINEL, Aug. 7, 1999, at 1A; *East Texas Woman Wins \$23 Million Award in Fen-Phen Case*, ST. AUGUSTINE RECORD, Aug. 7, 1999; *Jury Awards \$23 Million in Fen-Phen Case*, TIMES (Gainesville, Fla.), Aug. 7, 1999; *Jury Awards Texas Woman \$23 Million in Diet Pill Case*, FLORIDA TODAY (Melbourne, Fla.), Aug. 7, 1999; Mike Finger, *Woman Wins \$23 Million Award for Fen-Phen*, NAPLES DAILY NEWS (Naples, Fla.), Aug. 7, 1999; *Fen-Phen Patient Wins \$23 Million in First Case to Go to a Jury*, MIAMI HERALD, Aug. 7, 1999, at 5A; *Fen-Phen User Wins \$23 Million in Lawsuit*, NEWS-PRESS (Fort Myers, Fla.), Aug. 7, 1999; *Diet Pill User Gets Big Jury Award*, ST. PETERSBURG TIMES, Aug. 7, 1999, at 1A; *Woman Wins Diet Drug Lawsuit*, TAMPA TRIBUNE, Aug. 7, 1999; *Woman Nets \$23 Million in Fen-Phen Suit*, NEWS-JOURNAL (Daytona Beach, Fla.), Aug. 7, 1999; *East Texas Woman Awarded \$23 Million in Fen-Phen Case*, BRADENTON HERALD, Aug. 7, 1999; *Woman Wins Fen-Phen Case; \$23 Million Awarded in Diet Drug Judgment*, SUN HERALD (Charlotte Harbor, Fla.), Aug. 7, 1999, at 1; Mike Finger, *\$23 Million Paid in Fen-Phen Proceeding*, NEWS CHIEF (Winter Haven, Fla.), Aug. 7, 1999, at 1A; *\$23 Million Awarded in Fen-Phen Case*, SARASOTA HERALD-TRIBUNE, Aug. 7, 1999; Mike Finger, *Jury Awards Woman \$23 Million in Diet Drug Trial*, TALLAHASSEE DEMOCRAT, Aug. 7, 1999; *Woman Awarded \$23 Million in Court Ruling on Fen-Phen*, PENSACOLA NEWS JOURNAL, Aug. 7, 1999; *Woman Wins \$23 Million Award in Fen-Phen Trial*, BOCA RATON NEWS, Aug. 7, 1999; *Jury Pinches Fen-Phen Maker for \$23 Million in Liability Case*, FLA. TIMES-UNION, Aug. 7, 1999, at A6; Kate Perrotta, *Fat City for Fen-Phen Victim: Diet-Drug Jury Gives Texas Woman \$23M*, N.Y. POST, Aug. 7, 1999, at 7; *\$23 Million Awarded in Diet Drug Case*, BLADE (Toledo, Ohio), Aug. 7, 1999; Mike Finger, *Jury Orders Drug Maker to Pay Woman \$23 Million*, DAYTON DAILY NEWS, Aug. 7, 1999; *Diet Drug Company Loses Suit in Texas*, AKRON BEACON JOURNAL, Aug. 7, 1999; *Woman Wins \$23 Million Over Fen-Phen*, MORNING JOURNAL (Lorain, Ohio), Aug. 7, 1999; *Firm Found Liable in Fen-Phen Court Case*, RECORD-COURIER (Ravenna, Ohio), Aug. 7, 1999; Mike Finger, *East Texas Woman Wins \$23 Million in Diet Drug Lawsuit*, GALION INQUIRER (Galion, Ohio), Aug. 7, 1999; Mike Finger, *Attorney Predicts More Suits After Fen-Phen Verdict*, SENTINEL-TRIBUNE (Bowling Green, Ohio), Aug. 7, 1999; Mike Finger, *Fen-Phen User Awarded \$23 Million*, REPOSITORY (Canton, Ohio), Aug. 7, 1999; Mike Finger, *Woman Awarded in Fen-Phen Case*, NEWS-HERALD (Willoughby, Ohio), Aug. 7, 1999; *Women Wins \$23 Million in Fen-Phen Case*, HOUSTON CHRON., Aug. 7, 1999, at 1; *Woman Wins Diet Drug Case*, GREENSBORO NEWS & REC. (N.C.), Aug. 7, 1999, at A4; *Woman Wins Diet-Drug Lawsuit*, TAMPA TRIB., Aug. 7, 1999, at 11; Jim Yardley, *\$23 Million Awarded in Diet-Pill Suit; Courts: A Texas Woman Says She Has Heart Damage after Taking 'Fen-Phen' to Lose Weight*, ORANGE COUNTY REG. (Cal.), Aug. 7, 1999, at A01.

<sup>161</sup> See Mike Finger, *Fen-Phen User Wins \$23 Million*, SALT LAKE TRIB., Aug. 7, 1999, at A1.

<sup>162</sup> See Sharon Bernstein, *Jury Awards \$23.3 Million in Fen-Phen Case*, LOS ANGELES TIMES, Aug. 7, 1999, at A1; Mike Finger, *Woman Wins \$23.36 Million in Fen-Phen Suit*, FORT WORTH STAR-TELEGRAM, Aug. 7, 1999, at 1; Mike Finger, *Woman Awarded \$23 Million in Diet-Drug Case*, ORLANDO SENTINEL, Aug. 7, 1999, at A15.

## V. Publicity About the National Settlement

65. Less than two months later, in October 1999, there was another massive wave of publicity in the national and local media, when a Memorandum of Understanding concerning a nationwide class action settlement (the “Settlement”) between Wyeth and users of Pondimin and/or Redux was publicly announced. That Settlement was memorialized in a detailed settlement agreement, which was submitted in November 1999 for approval to the United States District Court for the Eastern District of Pennsylvania (the “MDL Court”). In the Settlement, Wyeth agreed to pay \$3.75 billion – a virtually unprecedented sum. Not only was the Settlement highly publicized, but an “elaborate and excessive plan of notice” was employed to ensure that notice would reach all those affected by the settlement as practicably as possible, as Judge Bechtel explained in his subsequent opinion that approved the Settlement as fair, reasonable, and adequate.<sup>163</sup>

66. The Settlement agreement was widely reported in the national news.<sup>164</sup> The *New York Times* featured on its front page in a story entitled

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<sup>163</sup> See *In re Diet Drugs Prod. Liab. Litig.*, Civ. A. No. 99-20593, 2000 WL 1222042, at \*35 (E.D. Pa. Aug. 28, 2000). The Settlement was first announced when a Memorandum of Understanding was signed in October 1999. The final agreement was signed November 18, 1999 and tentatively approved by Judge Bechtel on November 23, 1999. *Id.* at \*5.

<sup>164</sup> See, e.g., David Segal, *Fen-Phen Firm to Pay \$3.75 Billion; AHP Settlement Covers Current, Future Claims*, WASHINGTON POST, Oct. 8, 1999, at E01; *American Home Products Diet-Drug Pact Advances*, WALL ST. J., Nov. 24, 1999, at A10.

“Fen-Phen Maker to Pay Billions in Settlement of Diet-Injury Cases.”<sup>165</sup>

The Settlement also received front-page attention in *The Wall Street Journal*.<sup>166</sup>

67. News of the Settlement also was reported in local media throughout the country. Television news reports in various regions carried the story.<sup>167</sup> In addition, newspapers in a wide variety of states, such as

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<sup>165</sup> David J. Morrow, *Fen-Phen Maker to Pay Billions in Settlement of Diet-Injury Cases*, N.Y. TIMES, Oct. 8, 1999, at A1.

<sup>166</sup> *What's News*, WALL ST. J., Oct. 8, 1999, at A1.

<sup>167</sup> See, e.g., *Newscenter 5 Eyeopener* (WCVB-TV Oct. 8, 1999); *22 News First Look* (WWLP-TV Oct. 8, 1999); *News 40 This Morning* (WGGB-TV Oct. 8, 1999); *7 News at Noon* (WHDH-TV Oct. 8, 1999); *7 News Today in New England* (WHDH-TV Oct. 8, 1999); *News 4 This Morning* (WBZ-TV Oct. 8, 1999); *22 News* (WWLP-TV Oct. 8, 1999); *Eyewitness News at 5:30* (WFSB-TV Oct. 7, 1999); *Newschannel 8 at 5:30* (WTNH-TV Oct. 7, 1999); *The Evening Edition* (News 12 Connecticut Oct. 7, 1999); *Eyewitness News This Morning* (WFSB-TV Oct. 8, 1999); *Connecticut News Today* (WVIT-TV Oct. 8, 1999); *News Channel 8* (WTNH-TV Oct. 8, 1999); *12 News This Morning* (WPRI-TV Oct. 8, 1999); *Channel 8 at 5:30* (WMTW-TV Oct. 7, 1999); *News Center* (WCSH-TV Oct. 7, 1999); *News Center* (WCSH-TV Oct. 8, 1999); *NewsChannel 13 at Noon* (WGME-TV Oct. 8, 1999); *NewsChannel 13 Daybreak* (WGME-TV Oct. 8, 1999); *Channel 19 Ten O'Clock News* (WXIX-TV Oct. 7, 1999); *Channel 12 News at 5* (WKRC-TV Oct. 7, 1999); *Five O'Clock News* (WCPO-TV Oct. 7, 1999); *Five O'Clock News* (WLWT-TV Oct. 7, 1999); *Newchannel 5: Live on Five* (WEWS-TV Oct. 7, 1999); *Eyewitness News at 5* (WBNS-TV Oct. 7, 1999); *Six News at Five* (WSYX-TV Oct. 7, 1999); *News 22* (WKEF-TV Oct. 7, 1999); *NewsCenter 7 at 5:00* (WHIO-TV Oct. 7, 1999); *2 News at 5:00* (WDTN-TV Oct. 7, 1999); *NewsCenter 7 Daybreak* (WHIO-TV Oct. 7, 1999); *Channel 3 News Saturday* (WKYC-TV Oct. 9, 1999); *Eight is News at Ten* (WJW-TV Oct. 9, 1999); *News 19 This Morning* (WOIO-TV Oct. 8, 1999); *6 News at 6:00* (WSYX-TV Oct. 8, 1999); *Eight is News This Morning* (WJW-TV Oct. 8, 1999); *Channel 3 Morning News* (WKYC-TV Oct. 8, 1999); *Channel 3 News at Noon* (WKYC-TV Oct. 8, 1999); *Newschannel 5 Midday* (WEWS-TV Oct. 8, 1999); *Good Morning Cleveland* (WEWS-TV Oct. 8, 1999); *Eyewitness News at 5:00* (WBNS-TV Oct. 8, 1999); *Channel 9 Early Bird Special* (WCPO-TV Oct. 8, 1999); *News 5 Today* (WLWT-TV Oct. 8, 1999); *13 Action News Good Morning* (WTVG-TV Oct. 8, 1999); *21 Action News at Noon* (WFMJ-TV Oct. 8, 1999); *NewsCenter 7 Daybreak* (WHIO-TV Oct. 8, 1999); *News 4 at Noon* (WCMH-TV Oct. 8, 1999); *ABC 25 After* (WJXX-TV Oct. 7, 1999); *Good Morning Jacksonville* (WTLV-TV Oct. 7, 1999); *ABC 25 Nightcast* (WJXX-TV Oct. 7, 1999); *4 Eyewitness News Live at 5:30* (WJXT-TV Oct. 7, 1999); *4 Eyewitness News Nightbeat* (WJXT-TV Oct. 7, 1999); *Eyewitness News at 5:30* (WFTV-TV Oct. 7, 1999); *Newscenter 6 Nightbeat* (WKMG-TV Oct. 7, 1999); *The 10:00 News* (WKCF-TV Oct. 7, 1999); *News 12 at 5:30* (WPEC-TV Oct. 7, 1999); *4 Eyewitness News Daybreak* (WPLG-TV Oct. 8, 1999); *Today in Florida* (WSVN-TV Oct. 8, 1999);

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California, Florida, Texas, Ohio, North Carolina, Massachusetts, and Louisiana, all reported that Wyeth would pay “billions” to settle diet-drug lawsuits.<sup>168</sup>

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*Good Morning Jacksonville* (WTLV-TV Oct. 8, 1999); *4 Eyewitness News at Noon* (WJXT-TV Oct. 8, 1999); *ABC 25 Today* (WJXX-TV Oct. 8, 1999); *News Channel 2 Early Sunrise* (WESH-TV Oct. 8, 1999); *CBS News 4 This Morning* (WFOR-TV Oct. 8, 1999); *3 in the Morning* (WEAR-TV Oct. 8, 1999); *Fox News at 10:00* (WOFL-TV Oct. 8, 1999); *Good Day Tampa Bay at 5:30* (WTVT-TV Oct. 8, 1999); *Today in South Florida* (WTVJ-TV Oct. 8, 1999).

<sup>168</sup> See, e.g., *AHP to Pay Up to \$4.8B to Settle Fen-Phen Suits*, BOSTON GLOBE, Oct. 8, 1999, at C3; *Fen-Phen Marketer to Pay \$3.75B to Settle Suits*, BOSTON HERALD, Oct. 8, 1999, at 7; Amy Westfeldt, *Fen-Phen Users Win \$4.83B*, PATRIOT LEDGER (Quincy, Mass.), Oct. 8, 1999; *Fen-Phen Maker Agrees to Pay \$4.83B*, TELEGRAM & GAZETTE (Worcester, Mass.), Oct. 8, 1999; Amy Westfeldt, *\$4.83 Billion Settles Fen-Phen Lawsuits*, UNION-NEWS (Springfield, Mass.), Oct. 8, 1999, at A1; Amy Westfeldt, *\$4.83 Billion Settlement Reached in Fen-Phen Suit*, HARTFORD COURANT, Oct. 8, 1999, at A10; Amy Westfeldt, *American Home Products Reaches \$3.75B Diet Drug Settlement Over Fen-Phen*, ADVOCATE (Stamford, Conn.), Oct. 8, 1999; Amy Westfeldt, *Fen-Phen Maker Settled Product Liability Case*, BRISTOL PRESS (Bristol, Conn.), Oct. 8, 1999; Amy Westfeldt, *Fen-Phen Diet Drug Maker Agrees to \$4.83B Settlement*, CONNECTICUT POST (Bridgeport, Conn.), Oct. 8, 1999; Amy Westfeldt, *Fen-Phen Maker Agrees to \$4.83 Billion Settlement*, CALL (Woonsocket, R.I.), Oct. 8, 1999; *Fen-Phen Maker Agrees to Pay \$4.8 Billion*, PROVIDENCE JOURNAL, Oct. 8, 1999; Amy Westfeldt, *Diet Drug Liability Deal Made*, BURLINGTON FREE PRESS; *Diet Drug Lawsuit Settled*, RUTLAND DAILY HERALD (Rutland, Vt.), Oct. 8, 1999; *Fen-Phen Maker to Pay \$3.75 Billion Settlement*, BANGOR DAILY NEWS, Oct. 8, 1999; *Drug Firm Settles Fen-Phen Claims for \$3.75 Billion*, PORTLAND (Me.) PRESS HERALD, Oct. 8, 1999; Amy Westfeldt, *American Home Products Pays Up*, TIMES RECORD (Brunswick, Me.), Oct. 8, 1999; *Fen-Phen Maker Agrees to \$4.83 Billion Settlement*, BERLIN REPORTER (Berlin, N.H.), Oct. 8, 1999; *Drug Company Agrees to \$4.83 Billion Settlement*, CONCORD MONITOR (Concord, N.H.), Oct. 8, 1999; Amy Westfeldt, *American Home Products Pays Up to \$4.83B in Diet Drug Settlement*, CITIZEN (Laconia, N.H.), Oct. 8, 1999; *Fen-Phen Maker Set to Pay \$4B*, PORTSMOUTH HERALD (Portsmouth, N.H.), Oct. 8, 1999; Phil Galewitz, *Diet Drug Maker Settles Lawsuits for \$3.75B*, TELEGRAPH (Nashua, N.H.), Oct. 8, 1999; *Drug Company Offers to Pay \$4.83 Billion in Fen-Phen Suits*, UNION LEADER (Manchester, N.H.), Oct. 8, 1999, at A10; Sharon Bernstein and Paul Jacobs, *Fen-Phen Claims Lead to Settlement*, VALLEY NEWS (West Lebanon, N.H.), Oct. 8, 1999; Sharon Bernstein & Paul Jacobs, *\$4.83 Billion Offered to Settle Fen-Phen Claims; Pharmaceuticals: American Home Products Will Compensate Thousands of Patients Who May Have Suffered Heart Damage*, LOS ANGELES TIMES, Oct. 8, 1999, at C1; *Diet-Drug Maker Agrees to Pay Up to \$4.83 Billion*, ORLANDO SENTINEL, Oct. 8, 1999, at A3; *Fen-Phen Marketer to Pay \$3.75B to Settle Suits*, BOSTON HERALD, Oct. 8, 1999, at 7; *Firm Agrees to Settle Fen-Phen Suits; \$3.75 Billion is Set Aside For Claims*, NEW ORLEANS TIMES-PICAYUNE, Oct. 8, 1999, at C1; Andy Geller, *Diet-Drug Maker to Pay Fen-Phen Victims \$4.8B*, N.Y. Post, Oct. 8, 1999, at 4; Ron Nissimov, *\$4.83 Billion Offered in Fen-Phen Suit; Lawyers Say Deal Could Unravel*, HOUSTON CHRON., Oct. 8, 1999, at 3; Amy Westfeldt,

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68. In addition to this widespread national and local publicity concerning the Settlement, the MDL Court approved an elaborate notice program—running from November 1999 to February 2000—that employed sophisticated media techniques designed to reach all diet drug users.<sup>169</sup> That campaign used television messages that were broadcast 106 times over a period of five weeks on network television, and were broadcast 781 times for six consecutive weeks on various cable networks.<sup>170</sup> The text of the television message warned viewers about possible heart valve problems from diet drugs:

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[Footnote continued from previous page]

*Company to Pay \$4.83 Billion in Fen-Phen Settlement*, SAN ANTONIO EXPRESS-NEWS, Oct. 8, 1999, at 01A; Ben L. Kaufman and Susan Vela, *\$4.83B Fen-Phen Deal Proposed*, CINCINNATI ENQUIRER, Oct. 8, 1999, at A1; Amy Westfeldt, *Diet Drug Firm to Pay \$4.83 Billion*, CLEVELAND PLAIN DEALER, Oct. 8, 1999, at 1A; *Settlement to Cost Diet-Drug Maker up to \$4.83 Billion*, COLUMBUS DISPATCH, Oct. 8, 1999, at 1B; *Maker to Pay \$4.8 Billion Over Use of Fen-Phen*, BLADE (Toledo, Ohio), Oct. 8, 1999; *Fen-Phen Maker Settles for \$4.83B*, CINCINNATI POST, Oct. 8, 1999; Amy Westfeldt, *Diet Drug Maker to Pay \$4.83 Billion to Settle Cases*, DAYTON DAILY NEWS, Oct. 8, 1999; Amy Westfeldt, *Company Settles Fen-Phen Lawsuit*, REPOSITORY (Canton, Ohio), Oct. 8, 1999; *Drug Maker OKs Settlement*, TIMES LEADER (Martins Ferry, Ohio), Oct. 8, 1999; Amy Westfeldt, *Fen-Phen Payout May Top \$4 Billion*, ATLANTA CONST., Oct. 8, 1999, at 1A; Amy Westfeldt, *Fen-Phen Settlement is Largest Ever Offered in a Liability Case*, CHARLOTTE OBSERVER, at 4A, Oct. 8, 1999; *Makers of Diet Drug Agree to \$3.75 Billion Settlement*, TAMPA TRIBUNE, Oct. 8, 1999, at 4BF; Amy Westfeldt, *Fen-Phen Settlement is \$3.75B*, FORT LAUDERDALE SUN-SENTINEL, Oct. 8, 1999, at 1D; *Drugmaker Agrees to Settle Fen-Phen Suits for \$4.8-Billion*, ST. PETERSBURG TIMES, Oct. 8, 1999, at 1A; *Diet-Drug Maker Agrees to Pay Up to \$4.83 Billion*, ORLANDO SENTINEL, Oct. 8, 1999, at A3; *Fen-Phen Claims Produce \$4.83 Billion Settlement*, PENSACOLA NEWS-JOURNAL, Oct. 8, 1999; *Fen-Phen Suit is Settled for \$4.83 Billion*, PALM BEACH POST, Oct. 8, 1999; Phil Galewitz, *Diet-Drug Maker Settles for \$3.75 Billion*, TALLAHASSEE DEMOCRAT, Oct. 8, 1999; *Fen-Phen Nearly Settled*, BOSTON HERALD, at 17, Nov. 20, 1999; *Judge Gives Initial OK to Fen-Phen Pact*, LOS ANGELES TIMES, at C4, Nov. 24, 1999; *Preliminary Approval For Fen-Phen Settlement*, SAN FRANCISCO CHRON., Nov. 24, 1999.

<sup>169</sup> *In re Diet Drugs*, 2000 WL 1222042, at \*35.

<sup>170</sup> *See id.*

If you took the diet drug combination known as FenPhen or the diet drugs Pondimin or Redux, you may have heart valve problems and not know it. As a result of the proposed class action settlement, you could be eligible for free medical testing and compensation. But you must act promptly. You must decide whether to participate in this settlement by March 30, 2000. If you do nothing, your legal rights will be affected. Call 1-800-386-2070 today.<sup>171</sup>

69. A summary notice of the Settlement was also published in the print media throughout the United States.<sup>172</sup> This notice appeared repeatedly in numerous and varied magazines, including *Parade*, *People*, *Time*, *Ladies Home Journal*, *Redbook*, and *Good Housekeeping*.<sup>173</sup> Banner ads also were developed for use on the Internet.<sup>174</sup> The summary notice was further published in several national and seventy-seven local newspapers, as well as in a variety of publications targeted to healthcare providers and pharmacists.<sup>175</sup> In addition, notice was mailed to all pharmacists and doctors who were likely to have prescribed Pondimin or Redux or treated patients for complications resulting from their use. That package included, among other things, a “counter card” which pharmacists and physicians could

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<sup>171</sup> See *id.* at \*35 n.11.

<sup>172</sup> See *id.*; see also Official Court Notice: Attention Anyone Who Took “Fen-Phen,” Pondimin and/or Redux.

<sup>173</sup> See *In re Diet Drugs*, 2000 WL 1222042, at \*35 & n.12.

<sup>174</sup> See *id.* at \*35.

<sup>175</sup> *Id.* at \*35-36.

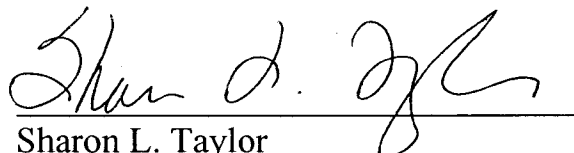


display to alert patients about the existence of the Settlement, with a toll-free number and website to contact for further information.<sup>176</sup>

70. As the MDL Court concluded, “[t]he media program . . . was highly successful,” in part because it was “greatly enhanced by the enormous publicity that has surrounding the diet drugs involved in this litigation and the publicity of this Settlement.”<sup>177</sup> In fact, according to a media analysis, 97% of women between the ages of 25 and 54 viewed one or more forms of televised or printed notice an average of 10 times, and almost 80% of women in the same age group were exposed to the televised or printed notice a minimum of five times.<sup>178</sup>

\* \* \*

I, the undersigned, declare under penalty of perjury that the facts set forth herein concerning the publicity with respect to the health risks associated with diet drugs are true and correct to the best of my knowledge, information and belief.

  
Sharon L. Taylor  
Executed on April 29, 2004

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<sup>176</sup> *Id.* at \*36.

<sup>177</sup> *Id.* at \*36.

<sup>178</sup> *Id.* at \*36 n.16.

# **EXHIBIT 8**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (Phentermine/ Fenfluramine/Dexfenfluramine) PRODUCTS LIABILITY LITIGATION	:	MDL DOCKET NO. 1203
THIS DOCUMENT RELATES TO:	:	
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JOYCE ANN ALLEN, et al.	:	
v.	:	CIVIL ACTION NO. 03-20310
WYETH, et al.	:	
	:	
BRENDA BARNETT, et al.	:	
v.	:	CIVIL ACTION NO. 03-20239
WYETH, et al.	:	
	:	
SARAH BROOKS, et al.	:	
v.	:	CIVIL ACTION NO. 03-20318
WYETH, et al.	:	
	:	
LORETTA GRANT, et al.	:	
v.	:	CIVIL ACTION NO. 03-20330
WYETH, et al.	:	
	:	
DAVID PICKERING, et al.	:	
v.	:	CIVIL ACTION NO. 03-20302
WYETH, et al.	:	
	:	
BETTY RAMSHUR, et al.	:	
v.	:	CIVIL ACTION NO. 03-20333
WYETH, et al.	:	
	:	
ROY SIMMONS, et al.	:	
v.	:	CIVIL ACTION NO. 03-20319
WYETH, et al.	:	
	:	
TRINA WATERS, et al.	:	
v.	:	CIVIL ACTION NO. 03-20323
WYETH, et al.	:	
	:	
ANTHONY WATSON, et al.	:	
v.	:	CIVIL ACTION NO. 03-20296
WYETH, et al.	:	
	:	
DOROTHY WINTERS, et al.	:	
v.	:	CIVIL ACTION NO. 03-20170
WYETH, et al.	:	
	:	
PAUL WOODCOCK, et al.	:	
v.	:	CIVIL ACTION NO. 03-20273
WYETH, et al.	:	
	:	

JAMIE WOODS, et al.  
v.  
WYETH, et al.

CIVIL ACTION NO. 03-20272

PRETRIAL ORDER NO. 3305

AND NOW, this 24<sup>th</sup> day of February, 2004, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of plaintiffs in Joyce Allen, et al. v. Wyeth, et al., CIV.A. No. 03-20310 (E.D. Pa.) to remand to the Circuit Court of Copiah County, Mississippi is DENIED;

(2) all claims in Allen against defendants John Long, M.D. and Fred J. McDonnell, M.D. are DISMISSED;

(3) the motion of plaintiffs in Brenda Barnett, et al. v. Wyeth, et al., CIV.A. No. 03-20239 (E.D. Pa.) to remand to the Circuit Court of Sunflower County, Mississippi is DENIED;

(4) all claims in Barnett against defendants Walter H. Rose, M.D., Joseph F. Roberts, M.D., Howard D. Clark, M.D., William A. Middleton, M.D., Ray A. Montalvo, M.D., Lloyd G. Hopkins, M.D., Alfred McNair, M.D., Charles J. Gruich, M.D., Magdi Wassef, M.D., Robert B. Townes, M.D., Charles D. Guess, M.D., Scott Jordan, M.D., Irvin H. Cronin, M.D., Michelle E. Rivlin, M.D., William Nichols, M.D., Richard H. Corson, M.D., Barry Gillespie, M.D., Terry Jackson, M.D., Jasper D. Moore, M.D., Paul Odom, M.D., W.M. Harris, M.D., and Patrick G. McLain, M.D. are DISMISSED;

(5) the motion of plaintiffs in Sarah Brooks, et al. v. Wyeth, et al., CIV.A. No. 03-20318 (E.D. Pa.) to remand to the Circuit Court of Sharkey County, Mississippi is DENIED;

(6) all claims in Brooks against defendants Kurt Kooyer, M.D., Virginia Joyce Vittor, M.D., Calvin Hull, M.D., Jim Roberts, M.D., Dan W. Jackson, D.O., Glenn F. Morris, M.D., Randy Easterling, M.D., Douglas L. Conner, M.D., Andrea Phillips, M.D., S.A. Kumah, M.D., Andrew Murphy, M.D., Charles F. Brock, M.D., Eric D. Harding, M.D., S.J. Creekmore, M.D., F. Lee Neal, M.D., Marcus L. Hogan, M.D., Terry Jackson, M.D., and Patrick G. McLain, M.D. are DISMISSED;

(7) the motion of plaintiffs in Loretta Grant, et al. v. Wyeth, et al., CIV.A. No. 03-20330 (E.D. Pa.) to remand to the Circuit Court of Holmes County, Mississippi is DENIED;

(8) all claims in Grant against defendants John G. Downer, M.D., Michael Braden, M.D., Herbert Hicks, M.D., Stephen A. Tramill, D.O., Daniel Edney, M.D., H. Wade Westbrook, M.D., Hilton E. O'Neal, M.D., Edward O'Brien, M.D., James Riser, M.D., Keith Rushing, M.D., Mark B. Stanley, M.D., Edsel F. Stewart, M.D., Gerald A. Turner, M.D., Jasper D. McDuffie, M.D., Patrick G. McClain, M.D., William Munn, M.D., David Richardson, M.D., Howard Clark, M.D., Don Gibson, M.D., Harold J. Wheeler, M.D., Joseph Roberts, M.D., and James Leak, M.D. are DISMISSED;

(9) the motion of plaintiffs in David Pickering, et al. v. Wyeth, et al., CIV.A. No. 03-20302 (E.D. Pa.) to remand to the Circuit Court of Jones County, Mississippi is DENIED;

(10) all claims in Pickering against defendant Terry Pitts, M.D. are DISMISSED;

(11) the motion of plaintiffs in Betty Ramshur, et al. v. Wyeth, et al., CIV.A. No. 03-20333 (E.D. Pa.) to remand to the Circuit Court of Jones County, Mississippi is DENIED;

(12) all claims in Ramshur against defendant Hugh Stancill, M.D. are DISMISSED;

(13) the motion of plaintiffs in Roy Simmons, et al. v. Wyeth, et al., CIV.A. No. 03-20319 (E.D. Pa.) to remand to the Circuit Court of Claiborne County, Mississippi is DENIED;

(14) all claims in Simmons against defendants Mark B. Stanley, M.D. and David M. Headley, M.D. are DISMISSED;

(15) the motion of plaintiffs in Trina Waters, et al. v. Wyeth, et al., CIV.A. No. 03-20323 (E.D. Pa.) to remand to the Circuit Court of Holmes County, Mississippi is DENIED;

(16) all claims in Waters against defendants John G. Downer, M.D., Anita Tribble, M.D., Jasper Moore, M.D., T.B. Parson, M.D., G.A. Carmichael, M.D., Calvin Hull, M.D., David L. Richardson, M.D., Edward Bryant, M.D., Dwilia South, M.D., Dorothy Gillespie, M.D., Edsel Stewart, M.D., Wayne Johnson, M.D., Patrick G. McLain, M.D., Howard Clark, M.D., Ronnye Purvis, M.D., Don Blackwood, M.D., and Charles Ozborn, M.D. are DISMISSED;

(17) the motion of defendant Edward Bryant, M.D. in Waters (E.D. Pa.) to dismiss Trina Waters' claims (Doc. #11) is DENIED as moot;

(18) the motion of plaintiffs in Anthony Watson, et al. v. Wyeth, et al., CIV.A. No. 03-20296 (E.D. Pa.) to remand to the Circuit Court of Hinds County, Mississippi is DENIED;

(19) all claims in Watson against defendants Ron Lewis, M.D., Andrea Phillips, M.D., and Jasper D. Moore, M.D. are DISMISSED;

(20) the motion of plaintiffs in Dorothy Winters, et al. v. Wyeth, et al., CIV.A. No. 03-20170 (E.D. Pa.) to remand to the Circuit Court of Holmes County, Mississippi is DENIED;

(21) all claims in Winters against S. Rao Rayuda, M.D., Jasper Moore, M.D., John Downer, M.D., Michael O'Neal, M.D., Keith Stanford, M.D., and Elias Abboud, M.D. are DISMISSED;

(22) the motion of plaintiffs in Paul Woodcock, et al. v. Wyeth, et al., CIV.A. No. 03-20273 (E.D. Pa.) to remand to the Circuit Court of Humphreys County, Mississippi is DENIED;

(23) all claims in Woodcock against Karen Mullen, M.D., Richard Carter, M.D., Edward Holmes, M.D., Douglas Conner, M.D., David Richardson, M.D., Elmertha Burton, M.D., Jonn Mann, M.D., Maria Soriano, M.D., Kent Darsey, M.D., Patrick G. McLain, M.D., Mack Gorton, M.D., Robert Jordan, M.D., Dennis Simms, M.D., Edsel Stewart, M.D., Michael O'Neal, M.D., Keith Lay, M.D., David Webber, M.D., Don Gibson, M.D., Sam Fillingame, M.D., Howard Clark, M.D., David Richardson, M.D., Richard Warren, M.D., Robert

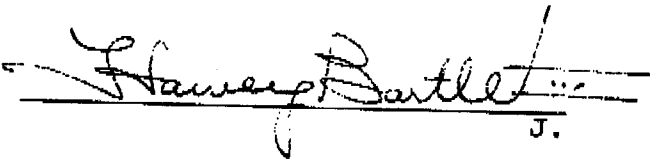


Cooper, M.D., Stephen A. Tramill, D.O., David Clippinger, M.D., and Buford Lambert, M.D. are DISMISSED;

(24) the motion of plaintiffs in Jamie Woods, et al v. Wyeth, et al., CIV.A. No. 03-20272 (E.D. Pa.) to remand to the Circuit Court of Sunflower County, Mississippi is DENIED; and

(25) all claims in Woods against Howard Clark, M.D., Charles Borum, M.D., Patrick G. McLain, M.D., Bill Maddox, M.D., Obie McNair, M.D., Terry Lowe, M.D., Keith Stanford, M.D., Harold Wheeler, M.D., Edgar Donahoe, M.D., Rafe Armstrong, M.D., H. Todd Coulter, M.D., Keith R. Lay, M.D., Edmund Miller, M.D., Charles McClees, M.D., David Richardson, M.D., William Middleton, M.D., Gloria Butler, M.D., Frank Wade, M.D., Jasper Moore, M.D., W.L. Prichard, M.D., Virginia Vittor, M.D., F. Lee Neal, M.D., William B. Lucas, M.D., W. Paul Wilcox, M.D., Ben Sanford, M.D., and Margaret Powell, M.D. are DISMISSED.

BY THE COURT:

  
J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (Phentermine/  
Fenfluramine/Dexfenfluramine)  
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO. 1203

THIS DOCUMENT RELATES TO:

**FILED** FEB 24 2004

JOYCE ANN ALLEN, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20310

BRENDA BARNETT, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20239

SARAH BROOKS, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20318

LORETTA GRANT, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20330

DAVID PICKERING, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20302

BETTY RAMSHUR, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20333

ROY SIMMONS, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20319

TRINA WATERS, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20323

ANTHONY WATSON, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20296

DOROTHY WINTERS, et al.

v.

WYETH, et al.

CIVIL ACTION NO. 03-20170

PAUL WOODCOCK, et al.

v.

WYETH, et al.

**ENTERED**  
CIVIL ACTION NO. 03-20273  
FEB 25 2004

CLERK OF COURT

JAMIE WOODS, et al.

v.

WYETH, et al.

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:  
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CIVIL ACTION NO. 03-20272

MEMORANDUM AND PRETRIAL ORDER NO. 3305

Bartle, J.

February 24, 2004

Before the court are the motions of numerous class members in twelve separate actions to remand to the appropriate Mississippi state courts their actions against defendants Wyeth<sup>1</sup> and the physicians who have prescribed Wyeth's diet drugs Pondimin and/or Redux for them. The state court actions were captioned Joyce Ann Allen, et al. v. Wyeth, et al., (Miss. Cir. Ct. Copiah County filed Nov. 1, 2002); Sarah Brooks, et al. v. Wyeth, et al., (Miss. Cir. Ct. Sharkey County filed Nov. 6, 2002); Brenda Barnett, et al. v. Wyeth, et al., (Miss. Cir. Ct. Sunflower County filed Nov. 6, 2002); Loretta Grant, et al. v. Wyeth, et al., (Miss. Cir. Ct. Holmes County filed Nov. 5, 2002); David Pickering, et al. v. Wyeth, et al., (Miss. Cir. Ct. Jones County filed Nov. 6, 2002); Betty Ramshur, et al. v. Wyeth, et al., (Miss. Cir. Ct. Jones County filed Nov. 6, 2002); Roy Simmons, et al. v. Wyeth, et al., (Miss. Cir. Ct. Claiborne County filed Nov. 1, 2002); Trina Waters, et al. v. Wyeth, et al., (Miss. Cir. Ct. Holmes County filed Nov. 5, 2002); Anthony Watson, et al. v. Wyeth, et al., (Miss. Cir. Ct. Hinds County filed Nov. 15, 2002); Dorothy Winters, et al. v. Wyeth, et al.,

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1. Wyeth was previously known as American Home Products Corporation ("AHP").

(Miss. Cir. Ct. Holmes County filed June 21, 2002); Paul Woodcock, et al. v. Wyeth, et al., (Miss. Cir. Ct. Humphreys County filed Nov. 5, 2002); and Jamie Woods, et al. v. Wyeth, et al., (Miss. Cir. Ct. Sunflower County filed Nov. 5, 2002).

According to Wyeth, the plaintiffs in these actions have exercised their right of intermediate opt-out under the Nationwide Class Action Settlement Agreement ("Settlement Agreement") in Brown v. American Home Products Corporation, CIV. A. No. 99-20593 (E.D. Pa. Aug. 28, 2000) ("Pretrial Order ("PTO") No. 1415"), which encompassed persons who ingested Wyeth's diet drugs Pondimin and Redux. See e.g., Settlement Agreement at § IV(A), (B), and (D)(4). Under the Settlement Agreement, those who have exercised an intermediate or back-end opt-out may sue Wyeth for compensatory damages in the tort system rather than obtain benefits from the AHP Settlement Trust. Unlike initial opt-outs, these plaintiffs were class members at the time of the approval of the class action settlement and continue to be so even though they now have separate lawsuits pending.

There are 256 plaintiffs in these twelve actions, and they are all represented by the same counsel.<sup>2</sup> Their motions for remand are before the undersigned as the transferee judge in MDL 1203, the mass tort litigation involving Wyeth's diet drugs commonly known as fen-phen. No federal claim for relief is

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2. Some plaintiffs are derivative claimants suing for loss of consortium.

alleged. Because these motions present nearly identical legal and factual issues, we will address them together.

I.

In brief summary, plaintiffs, all citizens of the state of Mississippi, filed suits for injuries sustained as a result of their use of the diet drugs known as Pondimin and/or Redux. The defendant Wyeth, the manufacturer of Pondimin and Redux, is a party of diverse citizenship from the plaintiffs. The defendant physicians who prescribed Pondimin and/or Redux to plaintiffs are alleged to be citizens of Mississippi.

Plaintiffs originally filed their complaints in Mississippi Circuit Courts in June or November, 2002, more than five years after fen-phen was withdrawn from the market in September, 1997. Wyeth timely removed the actions to the United States District Court for the Southern District of Mississippi. The Mississippi federal court deferred ruling on plaintiffs' motions, and the cases were then transferred to this court as part of MDL 1203.

The plaintiffs maintain that remand is appropriate because complete diversity does not exist as required under 28 U.S.C. § 1332(a). Wyeth counters that the non-diverse physicians were fraudulently joined because the applicable two-year statute of limitations bars plaintiffs' claims against these non-diverse defendants.<sup>3</sup> See Miss. CODE ANN. § 15-1-36 (West

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3. The statute of limitations is not an issue in plaintiffs' claims against Wyeth, which has waived its right to assert the  
(continued...)

2003). Thus, Wyeth argues, plaintiffs' claims against these non-diverse defendants should be disregarded for purposes of determining diversity of citizenship of the parties. Plaintiffs respond that the statute of limitations has not expired because they discovered their injuries less than two years prior to filing their motions for judgment against the non-diverse defendants.

## II.

This court addressed the identical issues presented by plaintiffs' remand motions in PTO No. 3281 in French, et al. v. Wyeth, et al., CIV. A. No. 03-20353 (E.D. Pa. Feb. 18, 2004), which is also part of the nationwide diet drug litigation. In French, we laid out in detail the standards for removal based on diversity jurisdiction and fraudulent joinder. See PTO No. 3281 at 2-4. Because we examined the same legal issues as they applied to nearly identical facts in French, we need not revisit them here.

## III.

The key issue in these cases, as in French, is whether the prescribing physicians, all purportedly Mississippi citizens, were fraudulently joined as defendants for the purpose of destroying diversity of citizenship and preventing removal.

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3. (...continued)  
statute of limitations defense in return for the plaintiffs giving up their right to sue Wyeth for "punitive, exemplary, or multiple damages." Settlement Agreement § IV.D.3.c; see PTO No. 2625 and PTO No. 2680.

Plaintiffs have brought claims for medical negligence against all of these non-diverse defendants.

Wyeth argues that plaintiffs' complaints do not state colorable claims against these defendants because plaintiffs' claims are barred by the Mississippi statute of limitations. The statute provides in relevant part:

For any claim accruing on or before June 30, 1998, and except as otherwise provided in this section, no claim in tort may be brought against a licensed physician, osteopath, dentist, hospital, institution for the aged or infirm, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of the course of medical, surgical or other professional services unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered.

MISS. CODE ANN. § 15-1-36(1) (emphasis added). For any claim accruing on or after July 1, 1998, the statute of limitations is the same for all relevant purposes.<sup>4</sup>

In French, we set forth the standard for when an action "accrues" under Mississippi law. See PTO No. 3281 at 6. In short, an action accrues when a patient can reasonably be held to have knowledge of the injury itself, cause of injury, and the conduct of the medical practitioner. Fortenberry v. Mem'l Hosp. At Gulfport, Inc., 676 So.2d 252, 255 (Miss. 1996); see also

4. The statute of limitations for claims accruing after July 1, 1998 adds tolling provisions for fraudulent concealment and instances when a foreign object is left in a patient's body. See MISS. CODE ANN. § 15-1-36(2)(a).(b). Both provisions require a plaintiff to bring an action within two years of the time when the alleged injury or fraud should have been discovered, and no later than seven years after the alleged act of neglect. See id.



First Trust Nat'l Ass'n v. First Nat'l Bank of Commerce, 220 F.3d 331, 336-37 (5th Cir. 2000); In re Catfish Antitrust Litig., 826 F. Supp. 1019, 1031 (N.D. Miss. 1993).

Plaintiffs contend that they brought their actions within two years "from the date the alleged act ... with reasonable diligence might have been first known or discovered." MISS. CODE. ANN. § 15-1-36(1). According to plaintiffs, they could not have reasonably discovered their purported injuries until their alleged heart problems were diagnosed after reviewing their echocardiograms. Plaintiffs assert that their diagnoses occurred less than two years prior to filing their complaint. Wyeth counters that plaintiffs should have been on notice of their stated injuries as a result of the widespread publicity accompanying the withdrawal of the diet drugs from the market in September, 1997. Wyeth further contends that plaintiffs should have known about their alleged injuries at the very latest in March, 2000, after Wyeth's extensive publicity campaign.

This court also discussed in French supra, the massive publicity in Mississippi and nationwide concerning the withdrawal of the diet drugs from the market and their possible connection to valvular heart disease. See PTO No. 3281 at 7-12. We find that here, as in French, plaintiffs have not established that they discovered their alleged injuries less than two years prior to bringing their lawsuits. In light of this publicity, plaintiffs, through the exercise of reasonable diligence, should have discovered their alleged injuries at the very latest by

March, 2000. However, their complaints were not filed until June or November, 2002. Thus, plaintiffs' claims against the in-state physicians are clearly time barred, and Wyeth has established that these in-state physicians are fraudulently joined.

In response to Wyeth's contention that the statute of limitations has lapsed for claims against in-state physician defendants, thus barring all tort claims against in-state physicians, plaintiffs cite Robinson v. Singing River Hospital, 732 So.2d 204 (Miss. 1999). Plaintiffs rely on Robinson for the proposition that the statute of limitations begins to run against an in-state physician only when the plaintiff has knowledge of his injury and the link between said injury and the in-state physician's conduct. In Robinson, the plaintiff received second degree burns when heating pads were placed on his skin. The court determined that because the plaintiff was burned and complained of his injury almost immediately, it was disingenuous for him to assert that he was not aware of his injury until another physician advised him that he was in fact injured. The court in Robinson found that "where the symptoms are not immediately manifested, the cause of action does not accrue until the [plaintiff] is aware or should be aware of his condition." 732 So.2d at 208 (citations omitted) (emphasis added).

Similar to Robinson, the plaintiffs here allege that they could not have been aware of their injury until the link between their alleged injuries and the conduct of the in-state physician was revealed after reviewing their echocardiograms.

Here, as in French, we will not entertain plaintiffs' argument that any alleged diet drug related heart problems were latent. See PTO No. 3281 at 12-13. We also reject the notion that plaintiffs could not reasonably have been aware of their stated injuries until their echocardiograms. As in French, we find that plaintiffs can reasonably be held to have knowledge of their injuries, the cause of their injuries and the conduct of their prescribing physicians as early as September, 1997 and at the latest by March, 2000. Thus, their actions accrued and the statute of limitations began to elapse at that time. See Fortenberry, 676 So.2d at 255.

V.

For the same reasons set forth in French, supra, Wyeth has met its heavy burden of showing that the in-state physician defendants are fraudulently joined. Accordingly, we will deny the motions of the plaintiffs to remand these actions to the several Mississippi state courts and will dismiss the complaints as to these physician defendants.